
(2015) 03 BOM CK 0161
In the Bombay High Court
Case No : Criminal Writ Petition No. 8 of 2015

Vishram Singbal	Vs	APPELLANT
State of Goa and Others		RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Factories Act, 1948 — Section 92

Citation : (2015) ALLMR(Cri) 3574

Hon'ble Judges : C.V. Bhadang, J.

Bench : Single Bench

Advocate : Hanuman D. Naik, for the Appellant; S.R. Rivankar, Public Prosecutor, Advocates for the Respondent

Final Decision : Allowed

Judgement

C.V. Bhadang, J.—Heard Shri Naik, learned Counsel for the petitioner and Shri Rivankar, learned Public Prosecutor for the respondent-State.

2. This Court by an order dated 02.02.2015, while issuing Rule had directed that the matter shall be heard finally. Accordingly, this criminal writ petition is being disposed of finally with the consent of the parties.

3. By this petition, filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (Cr.P.C., for short), the petitioner is seeking quashing of the criminal case no. OA/712/09/B, pending on the file of the learned Judicial Magistrate First Class, Panaji, Goa.

4. The brief facts are that the Inspector of Factories and Boilers, Panaji, Goa had filed a complaint against the petitioner alleging violation of provisions of Sub-rule 1 of Rule 132 of the Goa Factories Rules, 1985 (the Rules, for short), which is punishable under Section 92 of the Factories Act, 1948 (the Act, for short).

5. It so happened that one Sonu Mourya, who was working as an employee of a

contractor, engaged by the petitioner, in his factory had died of electrocution. The incident occurred on 17.05.2009 at 11:45 a.m. Rule 132(1) of the Rules provide that such an incident has to be intimated to the Chief Inspector of Factories and Boilers, within a period of four hours of the happening of the accident. The complaint was filed alleging that there was breach in this regard on the part of the petitioner. That complaint is registered as a Criminal Case No. OA/712/09/B and is pending on the file of the learned Judicial Magistrate First Class, Panaji.

6. It is contented on behalf of the petitioner that 17.05.2009 was a Sunday and thus, being a holiday, the office of the Chief Inspector of Factories and Boilers was closed. It is submitted that none the less, the petitioner sent an intimation of the accident to the Chief Inspector of the Factories and Boilers by a fax message, which was received in the office of the Chief Inspector of Factories and Boilers between 20:49 to 21:05 hours. It is submitted that the breach alleged is only technical in nature. It is submitted that in the absence of any intention in this regard, on the part of the petitioner, the prosecution is an abuse of the process of the Court. It is also submitted that it is not the case of the prosecution that the petitioner was responsible for the accident as such. It is submitted that in such circumstances, the prosecution is liable to be quashed.

7. It is not disputed by the learned Public Prosecutor that intimation was indeed received in the office of the Chief Inspector, Factories and Boilers on the same day, in the night at about 9:00 p.m. It is submitted that in such circumstances, appropriate orders may be passed.

8. On hearing the learned Counsel for the parties, I find that the accident in question had allegedly taken place on 17.05.2009 at 11:45 a.m. The perusal of the reply dated 08.06.2009 sent by the petitioner would show that thereafter, Sonu Mourya was brought to the occupational health centre at the site, where he was given first aid and CPR and thereafter, shifted to Goa Medical College hospital for further treatment. Sonu Mourya died at about 1:00 p.m. on the same day. The reply would further show that the petitioner had tried to establish a contact with the Chief Inspector of the Factories and Boilers at 5:00 p.m., which was within four hours of the death and subsequently had faxed the intimation which was received in the office of the Chief Inspector of the Factories and Boilers at about 9:00 p.m.

9. Rule 132(1) of the Goa Factories Rules, 1985, which is relevant for the purpose, reads as under:-

"132. Notification of accidents and dangerous occurrences - (1) When any accident which results in the death of any person or which results in such bodily injury to any person as is likely to cause his death, or any dangerous occurrence specified in the Schedule annexed hereto takes place in a factory, the manager of the factory shall, within four hours of the happening of such accident or occurrence, send a notice thereof by telephone, special messenger or telegram to the Inspector and the Chief Inspector and also to the Administrative Medical

Officer, Employees" State Insurance Scheme, Panaji." 10. The learned Counsel for the petitioner has placed reliance on the decision of the Hon"ble Calcutta High Court in the case of Anil Kumar Sharma Vs. Inspector of Factories, . In that case, a similar Rule provided that the intimation be sent forthwith. The Hon"ble Calcutta High Court has ruled that the term "forthwith" should receive a liberal or reasonable construction and would mean that the intimation has to be sent without any unreasonable delay. The submission is that, the present case would stand even on a better footing as the rule allows four hours, which would mean that the intimation has to be sent with reasonable despatch and without any delay.

11. The Hon"ble Apex Court in the case of Gian Singh Vs. State of Punjab and Another, , has inter alia held that where the prosecution would be in the nature of abuse of the process of the Court or where the possibility of conviction is remote and bleak, can always be quashed. In the present case as noticed earlier, the prosecution has not alleged any negligence as such, on the part of the petitioner in so far as the incident is concerned. The question is only as regards the late communication of the same. Considering, the overall circumstances and the fact that the possibility of conviction would be remote and bleak and further having regard to the fact that the Rule has to be interpreted in a reasonable manner, the petition is liable to succeed.

12. In the result, Rule is made absolute in terms of prayer clause (i), with no order as to costs.